

**U.S. State Department legal analysis of the IMSO Director's analysis of the
relationship between IMO and IMSO (Nov, 15, 2005)**

1. The U.S. Department of State has analyzed the Director's legal analysis and respectfully disagrees with the conclusions reached.
2. With respect to IMSO's authority, Article 11 of the IMSO Convention explicitly authorizes IMSO to carry out oversight of GMDSS providers. However, the United States believes that Articles 1(a), 2 and 28 of the IMO Convention implicitly authorizes the IMO to also carry out such oversight functions, through the MSC. Therefore, companies may appeal to either IMSO or the IMO for such an oversight function.
3. With respect to immunity of the member states of IMSO and of the IMO for actions of those organizations, the United States believes that the situations are very similar. While Article 11 of the IMSO Convention makes clear that the member states are not liable for the actions of IMSO, the absence of such a provision with respect to the IMO in the IMO Convention does not mean (as asserted by the Director) that the member states would consequently be liable for any oversight actions of the IMO. In the case of both IMSO and the IMO, the immunity of the member states for the actions of either organization would be determined under general principles of sovereign immunity. The United States believes that member states are not likely to be held liable for the oversight actions of either organization under general principles of sovereign immunity.
4. With respect to the immunities of both IMSO and the IMO for their own actions, the United States believes that the situations are very similar. Under the IMO Convention, the IMO's immunity is governed by the UN's General Convention on the Privileges and Immunities of the Specialized Agencies (although the U.S. is not a party to that Convention). The IMO Convention, article 65 and appendix II, requires member states to accord privileges and immunities to it. The situation with respect to IMSO is similar.
5. Under the US legal system, immunity for international organizations is provided by an Executive Branch designation under the International Organizations Immunity Act. The predecessor entities of IMO and IMSO were duly designated by Executive Order and therefore their Secretariats had immunity, but unfortunately, the relevant designation was not changed when each of these organizations changed their names. So the immunity situation of both IMSO and the IMO under U.S. law is currently unclear.